

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5227 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ZENUL ABEDIN GULAMNABI MALEK

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR HK RATHOD for Petitioner

Mr Tushar Mehta for respondent

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 17/10/97

ORAL JUDGMENT

RULE.

Mr Tushar Mehta, learned Advocate waives service of Rule for the respondents.

The petitioner's services have been terminated by order dated 4.11.1995. He was served with charge-sheet dated 29.9.1994. By the said memo, the petitioner, who was holding the office of Executive Engineer of

Wanakbori, TPS was informed that a departmental enquiry has been instituted against him. He was asked to submit reply of the charges as stated in the accompanied Article of charges. The Article of Charges reads as follows:

"Shri Z G Malek, while working as Executive Engineer at Wanakbori TPS has committed acts of misconduct. He is, therefore, charged as under:-

1. Leaving head quarters without prior permission
5. Indiscipline and undisciplined behaviour
7. Disobedience of any order of the superior officer or a senior officer
25. Habitual breach of any orders and circulars
30. Habitual negligence or neglect of work or habitual breach of regulations or instructions."

A reply to the said charge-sheet was submitted denying the allegations under communication dated 12.10.1994 stating inter-alia, that he was always informing his superiors verbally before leaving the headquarters. He was also sending leave reports. It was also stated that he used to proceed on leave only when it was utmost necessary i.e. sudden illness of his wife, father, mother or any other member of the family. It was also stated that all the leave for which he applied for were sanctioned. Summing up the reply on each charges, the petitioner states as follows:

- "(i) I was keeping my superiors informed about my leave due to extra-ordinary circumstances.
- (ii) I have never behaved in indiscipline and undisciplined manner,
- (iii) I have always obliged the order of my superior officer as well as Senior Officer
- (iv) I had not come across any breach of any orders and circulars,
- (v) I have not shown negligence or neglect of work or breach of regulation or instructions.

And hence, I do not admit myself guilty of any charge levelled against me as regarding my duties and work, I have never charged and I am sincere and faithful to my duties. Further, I may mention

here that, I am now on the verge of retirement and would like to work till the retirement i.e. just for two years.

In view of the above, I most humbly request your honour to withdraw the above charge sheet to award me due justice."

It appears that one Mr M N Bhatt, Dy.General Manager, TPS Wanakbori was appointed as Inquiry Officer and the petitioner appeared before him on 8.5.1995. The said Inquiry Officer had some informal talks with the petitioner which is reflected from the inquiry report. The Inquiry Officer found that the petitioner admitted that during the period 1.9.1986 onwards he was irregular in performing duties on account of certain family circumstances. He also gave an assurance that in future such acts will not be repeated. The petitioner also expressed that he was due to retire in less than 3 years. The English translation of the report of Mr M N Bhatt reads as follows:

"Today on dtd. 8.5.95 on Monday, Shri Z G Malek, Executive Engineer, has appeared in this office pursuant to letter and this office bearing No.WYPS/Ests/DA/2M/+3 dtd. 5.5.1995. For the inquiry proceedings conducted against him vide charge sheet No.DAM/CD) VI/DA/415/ZM/6268 dtd. 27.7.1994 Shri Malek states that he has received said charge sheet along with its all enclosures. He has filed reply to the said charge sheet vide his letter dtd. 12.10.94 wherein he has not admitted charge. But today when he appeared here at that time he states that I am coming regularly on duty from last October 25, 1994. The period from dtd. 1.9.1986 onwards which is shown in charge sheet therein I was irregular in performing duty and as per charge levelled against me there is defect in my duty which I accept. Regarding this defect he further states that his social, family and economical adverse situation is resultant. He, however, giving assurance that in future such matters will not be repeated.

He further stated that 23 months one left in his retirement from service.

In the above circumstances while admitting all the charges levelled against him he stated that he wants to request that any his financial loss

may not be caused to him.

Shri Malek has stated that he does not want to keep present any 'friend' during the inquiry proceedings or at the time of giving statement."

With the aforesaid report, Mr M N Bhatt sent a letter to the Executive Director, stating that the petitioner has admitted all the charges, and therefore, he is held guilty of the charges. In view of this, the Executive Director issued show cause notice dated 24.7.1995 as to why his services be not terminated. The petitioner submitted a detailed reply. It was stated by the petitioner that there was no admission of guilt by him, but he only explained the reasons for his absence. He also pointed out that the leave prior to 25.10.1994 were sanctioned after being satisfied of the correctness of the reasons stated in the application. The Executive Director concurred with the findings of the Inquiry Officer, and by order dated 4.11.95 terminated the services of the petitioner with immediate effect. The petitioner preferred an appeal against the said order to the Member (Technical), GEB. It was contended that no admission was made by him. In fact he had stated that he proceeded on leave on each occasions for compelling reasons after intimation to/or concurrence of the concerned authorities. He also stated that the reasons for applying leave were found to be genuine, and therefore, all the leave applications were accepted. It was also pointed out that he was left with one and half year's service and that he has a big family to support, and therefore, the GEB may adopt a humanitarian approach. The appeal was forwarded by the Chief Engineer with the note that "looking to the present state of service conditions and his latest record of leave, his case may be considered sympathetically". Considering the facts of the case, the Appellate Authority took a lenient view and decided that the petitioner be retired prematurely instead of termination from service. The decision was conveyed to the petitioner on 15.4.1996. The petitioner challenged the said decision in this Court by way of Special Civil Application which was registered as SCA No.4345/96. It was contended before this Court by the learned Advocate for the petitioner that under the relevant Discipline and Appeal Rules, there is no penalty of compulsory retirement, and therefore, the order passed by the Appellate Authority was illegal. This Court, accepting the petitioner's contention, allowed the Special Civil Application by order dated 11.3.1997 and remanded the matter to the Appellate Authority to take a fresh decision. After remand, the Appellate Authority

considered the petitioner's appeal afresh and rejected the same by order dated 7.4.1997 which was conveyed by Secretary under communication dated 17.5.1997.

2. I have heard Mr H K Rathod, learned Advocate for the petitioner and Mr Tushar Mehta, learned Advocate for the Gujarat Electricity Board. I have also perused the record produced before me. In the preceding paragraphs, I have reproduced the chargesheet and also the report of the Inquiry Officer. The article of charges, contains charges of misconduct of breach of regulations 1,5,7,25 and 30 of Schedule 'A' appended to the Discipline and Appeal Rules. A reading of the inquiry report shows that the Inquiry Officer has not given any finding on each of the charges and he simply, on certain informal talks with the petitioner, concluded that the petitioner has admitted the guilt. In fact, the petitioner has not admitted the guilt, but he has only given explanation. He has also stated before the Disciplinary Authority that there were certain compelling reasons for which he had to remain absent. He was granted leave on all occasions considering the genuineness of the reasons.

3. It is true that for an Inquiry Officer it is not necessary to state his conclusions minutely on each of the questions raised and the report also need not contain all the attributes of judgment passed by the Court but a report which is based only on opinion derived by oral talks, and not based on proper recorded evidence, is no enquiry report in the eye of law or at least the enquiry is not in order. Any order imposing penalty on the basis of such report is void. In the case in hand the Inquiry Officer has not even bothered to record the statement of the petitioner. He has not even looked into the record. He simply informally talked to the petitioner even without warning that any admission in the informal talk will be construed as admission, and the same shall be used against him. The Inquiry Officer quickly submitted a sketchy report, using the admission against the petitioner without considering the explanation given by him. Thus, in my view, the impugned order of termination based on such enquiry report is illegal and void, which deserves to be quashed and set aside.

3. In view of the aforesaid, this Special Civil Application is allowed. The order of termination dated 4.11.1995 and all other consequential orders are quashed and set aside. Since the petitioner has now retired on

31.5.1997, it will not be appropriate to give liberty to the respondent to proceed with a fresh enquiry. The petitioner will be entitled to all consequential benefits, as if no order of termination has been passed.

Rule made absolute accordingly

msp